

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5207 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DIWALIBEN WD/O. ANUPJI JOITAJI

Versus

DY.EXECUTIVE ENGINEER

Appearance:

MR BG JANI for Petitioners
MR PK JANI for Respondent No. 1, 3
Ms Hansa B Punani, AGP for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 19/06/2000

ORAL JUDGEMENT

Rule. Learned AGP, Ms. Hansa B Punani waives service of rule for respondents No.1 and 2. Mr P K Jani, learned Advocate waives service of rule for respondents No.3. By consent of the learned Advocates for the parties, the petition is heard today.

2. By filing this petition under Article 226 of the Constitution of India, the petitioners have prayed to issue appropriate writ, direction or order quashing and setting aside the acquisition proceedings of LAQ No.27/90 in respect of their acquired lands bearing survey No.222 situated at village Koita, Taluka Patan, measuring about 0.35 acres. The State Government had decided to acquire lands of the petitioners along with other lands for construction of road namely; Utvada-Raviyana Khodana. Due to private negotiations with other land owners, possession of acquired lands of other land owners was taken and the road was duly constructed excluding the land of the petitioners bearing survey No.222. Voluntary sale deeds were duly executed between the parties as per the Resolution of the Government bearing No. SVC-1071-14573-H and compensation with regard to the petitioners' land as per the rate arrived at by the negotiation with other land owners was deposited. As the petitioners did not agree to the voluntary sale deed and did not hand over the possession of the said land. Notification under section 4 (1) of the Act for the said public purpose was published in the Gazette on March 21, 1991. The petitioners apprehended that respondents shall take possession of their acquired land bearing survey No.222 by forcible entry into the land and, therefore, they have filed this petition challenging the action of the respondents on the ground that the notification under Section 4 has already lapsed and the petitioners cannot be forced to execute the sale deed with regard to land bearing survey no.222.

3. It is true that possession of the petitioners' land is still not taken pursuant to the notification under section 4(1) of the Act dated March 21, 1991. The petitioners had refused to execute voluntary sale deed with the State Government and the acquiring body. When the petitioners had refused to execute voluntary sale deed, the State Government should have proceeded further with the issuance of Section 6 notification and ought to have initiated further proceedings as per the provisions of the Act. As Section 4 was not followed by declaration under Section 6, in our opinion, notification under Section 4 which has lapsed. However, we make it clear that it would be open for the respondents to initiate acquisition proceedings as per the provisions of the Act.

4. As a result of the foregoing discussion, this petition deserves to be allowed. The respondents are hereby restrained from taking possession of the petitioners' land bearing survey no.222 situated at village Koita, Taluka Patan without following due procedure as provided under the provisions of the Land Acquisition Act, 1894.

Rule made absolute accordingly. No order as to costs.

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msp.